

Agenda Item Form

Agenda Date: 08/31/04

Districts Affected: All

Dept. Head/Contact Information: Human Resources, Terry A. Bond, (915) 541-4509

Type of Agenda Item:

- | | | |
|---|---|--|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input checked="" type="checkbox"/> Other <u>Personal Services Contract</u> | | |

Funding Source:

- ☒ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☐ Other Source: _____

Legal:

- ☒ Legal Review Required Attorney Assigned (please scroll down): Lupe Cuellar ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

To preside at employee discipline appeal hearings and make recommendations to the Civil Service Commission.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

Hearing Officer expenses are budgeted in the Human Resources Dept.

Statutory or Citizen Concerns:

None Anticipated

Departmental Concerns:

None Anticipated

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a contract with **BRUCE J. PONDER** for professional services as Hearing Officer for the Civil Service Commission, for a period from September 16, 2004 through December 31, 2004, at the rate of \$100.00 per hour, not to exceed 25 hours per month without prior approval of the Commission Chair.

ADOPTED this 31st day of August, 2004.

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Guadalupe Cuellar
Deputy City Attorney

STATE OF TEXAS)
)
COUNTY OF EL PASO)

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made this 31st day of August, 2004 by and between the **CITY OF EL PASO**, a home rule municipal corporation, hereinafter called "City", and **BRUCE J. PONDER**, hereinafter called "Contractor", witnesseth:

WHEREAS, the City Charter of the City of El Paso in Sec. 6.1-17 provides that the Civil Service Commission (Commission) will appoint a Hearing Officer(s) to hear appeals; and

WHEREAS, Civil Service Commission Rule 1, Section 6, provides that such Hearing Officer(s) will have knowledge, skills, training and experience in the field of labor relations; and

WHEREAS, the Commission has determined that Contractor is qualified and knowledgeable in the field of labor relations so as to be able to perform such services;

NOW, THEREFORE, the parties do mutually agree as follows:

1. SCOPE OF SERVICES.

The Contractor shall perform the following services under the terms and conditions hereinafter stated, and the Contractor hereby accepts and agrees to perform such services:

(a) All duties for the Hearing Officer as listed in Sec. 6.13-7 of the Charter of the City of El Paso.

(b) Keeping current with the law in the field of labor and employment matters, in order to be able to render knowledgeable opinions.

(c) Such other duties as the Commission may determine are necessary or related to the general scope of this contract.

2. PERIOD OF CONTRACT.

The services of Contractor are for the period of September 16, 2004 through December 31, 2004.

3. COMPENSATION AND METHOD OF PAYMENT.

The Contractor shall be paid on a monthly basis at the rate of \$100.00 per hour, not to exceed twenty-five (25) hours per month without the prior approval of the Commission Chair. The Contractor shall prepare a monthly statement which shall be paid after approval by the Commission. The City will not pay any fringe benefits. The compensation herein includes all items necessary for the preparation of written opinions by the Contractor. Specifically, the compensation herein includes, but is not limited to, any research that the Contractor may deem necessary on basic labor law issues. Should a situation arise that calls for research outside the generally recognized field of labor law issues, the Contractor may be reimbursed for such research, upon prior approval by the Commission Chair for the necessity for such research. City agrees to provide needed administrative support for the Contractor through the Human Resources Department and the City Attorney's Office. The City will provide space for the hearings to be conducted hereunder.

4. REPORTING.

The Contractor shall provide periodic reports to the Commission of Contractor's analysis, observations and recommendations necessary for carrying out the functions of the Hearing Officer.

5. PERFORMANCE STANDARDS

The Contractor shall submit his recommendations to the Secretary of the Commission within thirty (30) days after completion of the evidentiary hearing or after the filing of briefs by the parties, unless the Contractor requests and is granted an extension

by the Commission Chair. The Contractor shall contact the parties within ten (10) working days after receipt of an assigned appeal.

6. LOCATION OF PERFORMANCE.

The place where such services are to be performed is the City and County of El Paso, State of Texas.

7. INDEPENDENT CONTRACTOR RELATIONSHIP.

Nothing herein shall be construed as creating the relationship of employer and employee between the parties. The City shall not be subject to any obligations or liabilities of the Contractor incurred in the performance of this contract, unless otherwise herein authorized. The Contractor expressly agrees to indemnify and hold harmless the City for any or all liabilities and obligations incurred due to any breach of contract or negligent acts or omissions, or other defalcations on the part of the Contractor.

8. LAW GOVERNING CONTRACT.

For purposes of determining the place of the contract and the law governing the same, it is agreed that this contract is entered into in the City of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue for all purposes shall be in the courts of El Paso County, Texas.

9. TERMINATION.

Either party may terminate this contract without cause after thirty days written notice to the other party of the intention to terminate. Should the City have cause to terminate this contract or should the Contractor breach a term of this Agreement, the contract may be terminated immediately upon notice to the Contractor. Notices required herein shall be mailed, postage prepaid, to the following:

CITY: City of El Paso
Human Resources
Attn: Director
#2 Civic Center Plaza
El Paso, Texas 79901

CONTRACTOR: Bruce J. Ponder

10. ENTIRE AGREEMENT.

This contract constitutes and expresses the entire agreement between the parties in reference to the professional services of the Contractor for the City, and to any of the matters or things herein provided for, or hereinbefore discussed or mentioned in reference to the hiring of such services; all promises, representations and understandings relative thereto herein being merged.

WITNESS the following signatures and seals:

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

CONTRACTOR

Bruce J. Ponder

APPROVED AS TO FORM:

Guadalupe Cuellar
Deputy City Attorney

APPROVED AS TO CONTENT:

Terry Bond
Director, Human Resources

APPROVED BY THE CIVIL SERVICE
COMMISSION:

By: _____
Secretary

Date: 08/26/04

BRUCE J. PONDER
ATTORNEY AT LAW

Summary

- Labor arbitrator for thirteen years. Member, Roster of Arbitrators, Federal Mediation and Conciliation Service; panel of arbitrators for City of El Paso and El Paso Municipal Police Officers Association; and El Paso County Sheriff's Department and El Paso County Deputy Sheriffs Association..
- Eleven years experience in administrative personnel law as a hearing officer for the City of El Paso. Ten years for the El Paso County Environmental and Health District.
- Licensed attorney for thirty one years. Extensive employment and criminal law experience
- Trained mediator for ten years.
- Twenty seven years teaching experience at El Paso Community College and the University of Texas at El Paso), in the areas of criminal law, labor law, and dispute resolution.

Professional History

Attorney licensed by Supreme Court of Texas, 1972; United States District Court for the Western District of Texas, 1974; United States Court of Appeals, Fifth Circuit, 1975; United States Supreme Court, 1978.

General practice of law in El Paso, Texas, 1973-1991, including criminal law, labor/employment law, tort law, and commercial litigation, including bankruptcy. Practice, 1999-2002, limited to representing clients in criminal cases, labor arbitration and public employment law.

Trial attorney, El Paso County Public Defender, 2002-present. Criminal trial and appellate law.

Labor arbitrator, Roster of Labor Arbitrators, Federal Mediation and Conciliation Service (1998-present).

Labor arbitrator, expedited arbitration program, Department of Veterans Affairs (VA Medical Center-Houston) and American Federation of Government Employees, Local 1633 (1999).

Hearing Officer for the Civil Service Commission for the City of El Paso, Texas, 1990 - 2001 .

Hearing Officer for the El Paso City-County Environmental-Health District, 1991- present.

Mediator trained in forty-hour mediator course, in March, 1991. Course approved by the State Bar of Texas Minimum Continuing Legal Education Department. Ten years mediation experience in tort liability, employment and commercial disputes.

Education

University of Texas at Austin School of Law (**J.D.** 1972) and the University of Texas at Austin, (**B.A.**, government major 1969).

Academic Experience

Lecturer at the University of Texas at El Paso, 1987-present, teaching courses in the following areas:

- Criminal Procedure - Survey course with emphasis on constitutional framework for criminal procedure; topics included search and seizure, interrogation, identification procedures, exclusionary rule, pre-trial procedure, trial, and post-trial procedures. (1992-2003)
- Criminal Law - Study of substantive criminal law, including elements of offenses, gradations of offenses, defenses and punishments. (1992-1993)
- Seminar course: The Death Penalty. (2001, 2004)
- Dispute Resolution - Survey course, both academic and experiential, including study of negotiation, mediation, arbitration, hybrid processes, disputing environments and dispute resolution systems design.
- Labor Relations (general survey course and labor arbitration course). (1987-1992)

Instructor in law at El Paso Community College, 1977-1987, teaching business law and courtroom procedure.

Published Arbitration Award

City of El Paso, 110 LA 729 (1998).

Publications and Seminars

Mendoza, N.A., Hosch, H.M., Ponder, B.J., Carillo, V., "Well . . . ah . . . Hesitations and Hedges as an Influence on Jurors' Decisions." Journal of Applied Social Psychology, 30, 2610-2621, 2000.

Palafox, Patricia L., Ponder, Bruce J., Morton, Fred, Zaboroski, Suzette, "Ethics in Legal Negotiations," an interactive seminar presented by the Alternative Dispute Resolution Committee of

the El Paso Bar Association, 1999. Organizer and panel discussion leader on topic of employment law. (MCLE credit awarded by the State Bar of Texas.)

Ponder, Bruce J., "Court-Enforced Arbitration in Employment Discrimination Claims," E.P. Law, Summer 1998, Vol. 2, No.2, 6-10.

Perez, D.A., Hosch, H.M., Ponder B., Chanez, G.J., "Ethnicity of Defendants and Jurors as Influences on Jury Decisions." Journal of Applied Psychology, 23, 1249-1262, 1994.

Ponder, Bruce J., Villa, Carlos, and High, Charles, "Labor Arbitration for Attorneys," (1988) Center for Professional Development, the University of Texas at El Paso (MCLE credit awarded by the State Bar of Texas and by the Board of Legal Specialization of the State Bar of Texas for credit in the recognized specialty of labor law). Course Director and speaker.